Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

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Date:
September 23, 2002

Legend

A =
B =

Dear :

This letter responds to a letter dated May 29, 2002, submitted on behalf of Taxpayer by its authorized representative, requesting rulings under section 29 of the Internal Revenue Code.

You have represented the facts to be as follows:

Taxpayer received PLR 9807008 concerning qualification for tax credits under section 29 of the Internal Revenue Code. Taxpayer now plans to use an alternative chemical reagent to produce synthetic fuel in Taxpayer's synthetic fuel facilities and to relocate one or more of its facilities and has requested ruling that:

1. Each facility of the Taxpayer, with use of the of the process described and the B chemical reagent, will produce a "qualified fuel" within the meaning of section 29(c)(1)(C).

2. Provided a facility was "placed in service" prior to July 1, 1998 within the meaning of section 29(g)(1), relocation of such facility to a different location after June 30, 1998, will not result in a new placed in service date provided the fair market value of the used property is more than 20% of the facilities total fair market value (the cost of the new property plus the value of the used property.

Taxpayer is a Delaware limited partnership. Taxpayer constructed, owns and operates four facilities for producing a solid synthetic fuel from coal (the Product). Each

facility consists of two production lines each of which consists of a briquetter which is fed by its associated mixer. The Taxpayer has supplied a detailed description of the process employed at the Facilities.

The Taxpayer currently wants to change its chemical reagent from A to B. A recognized expert in combustion, coal, and chemical analysis has performed numerous tests on the coal used at the facilities and has submitted a report in which the expert concludes that significant chemical changes take place with the application of the process to the coal using Chemical reagent B.

Taxpayer may relocate one or more of its Facilities. The Taxpayer has represented that following the relocation the cost of any new property incorporated into a facility when it will be reassembled will be less than 20 percent of the total cost of Facility A (that is, purchase price plus cost of additions, changes, and repairs).

In Rev. Rul. 86-100, 1986-2 C.B. 3, the Internal Revenue Service ruled that the definition of the term “synthetic fuel” under section 48(l) and its regulations are relevant to the interpretation of the term under section 29(c)(1)(C). Former section 48(l)(3)(A)(iii) provided a credit for the cost of equipment used for converting an alternative substance into a synthetic liquid, gaseous, or solid fuel. Rev. Rul. 86-100 notes that both section 29 and former section 48(l) contain almost identical language and have the same overall congressional intent, namely to encourage energy conservation and aid development of domestic energy production. Under section 1.48-9(c)(5)(ii) of the Income Tax Regulations, a synthetic fuel “differs significantly in chemical composition,” as opposed to physical composition, from the alternate substance used to produce it. Coal is an alternate substance under section 1.48-9(c)(2)(i).

Based on the information submitted and representations made, including the preponderance of the test results, we agree that the fuel to be produced in each Facility using the described process and chemical reagent B on the coal will result in a significant chemical change to the coal, transforming the coal feedstock into a solid synthetic fuel.

Rev. Rul. 94-31, 1994-1 C.B. 16, concerns section 45, which provides a credit for electricity produced from certain renewable resources, including wind. The credit is based on the amount of electricity produced by the taxpayer at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service, and sold by the taxpayer to an unrelated person during the taxable year. Rev. Rul. 94-31 holds that, for purposes of section 45, a facility qualifies as originally placed in service even though it contains some used property, provided the fair market value of the used property is not more than 20 percent of the facility’s total value (the cost of the new property plus the value of the used property).

Rev. Rul. 94-31 concerns a factual context similar to the present situations. Consistent with the holding in Rev. Rul. 94-31, if the facilities were "placed in service" prior to July 1, 1998, within the meaning of section 29(g)(1), the relocation of a facility after June 30, 1998, or replacement of parts of either facility after that date, will not result in a new placed in service date for either facility for purposes of section 29 provided the fair market value of the original property is more than 20 percent of each respective facility's total fair market value at the time of the relocation or replacement. When property is placed in service is a factual determination, and we express no opinion on when the facilities were placed in service.

Accordingly, based on the information submitted and the representations made, we conclude as follows:

1. Each facility of the Taxpayer, with use of the of the process described and the B chemical reagent, will produce a "qualified fuel" within the meaning of section 29(c)(1)(C).

2. Provided a facility was "placed in service" prior to July 1, 1998 within the meaning of section 29(g)(1), relocation of such facility to a different location after June 30, 1998, will not result in a new placed in service date provided the fair market value of the used property is more than 20% of the facilities total fair market value (the cost of the new property plus the value of the used property.

Except as specifically ruled upon above, we express no opinion concerning the federal income tax consequences of the transaction described above.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling may be modified or revoked by the adoption of temporary or final regulations to the extent the regulations are inconsistent with any conclusion in this ruling. See section 12.04 of Rev. Proc. 2002-1, 2002-1 I.R.B. 1, 49. However, when the criteria of section 12.05 of Rev. Proc. 2002-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer and to a second authorized representative.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

/s/
Joseph H. Makurath
Senior Technician Reviewer, Branch 7
Office of Associate Chief Counsel
(Passthroughs and Special Industries)